

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:11-cr-00084-MR-DLH**

UNITED STATES OF AMERICA

vs.

MARIO CLOTHINO GOMES,

Defendant.

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ORDER

THIS MATTER is before the Court on the parties' memoranda concerning restitution [Docs. 45, 47].

At the sentencing hearing on December 18, 2013, the issue arose as to whether restitution could be ordered in this case when the Defendant and the victim previously entered into a settlement agreement in a civil lawsuit based on the same actions giving rise to the instant case. The Defendant argued that the settlement agreement barred the Government from seeking additional restitution on behalf of the victim. The Government contended, on the other hand, that the settlement amount may be used only to offset the total amount of restitution ordered. Pursuant to 18 U.S.C. § 3664(d)(5), the Court deferred the final determination of restitution for a

period of ninety (90) days and ordered the parties to submit briefs on the issue presented. On January 13, 2014, the parties submitted their respective briefs. [Docs. 45, 47].

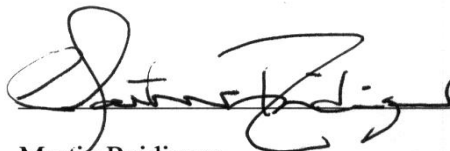
Upon review of the parties' briefs, the Court concludes that the Mandatory Victim Restitution Act (MVRA), 18 U.S.C. §§ 3663A and 3664, requires that the Court set restitution at whatever figure it determines to be the full amount of the victim's loss and that the Defendant would then be entitled to have that amount reduced by the amounts paid pursuant to his settlement agreement with the victim pursuant to § 3664(j)(2).

Having determined that an award of restitution in the full amount of the victim's loss is required, the Court will allow the parties an additional opportunity to submit any further briefing on the issue of restitution and the amount of restitution to be awarded before entering an Amended Judgment.

Accordingly, **IT IS, THEREFORE, ORDERED** that the parties may file any further briefing on the issue of restitution on or before **February 14, 2014**.

Signed: January 31, 2014

IT IS SO ORDERED.


Martin Reidinger
United States District Judge

